

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Trevor Hackett	Team: Squad #13	CCRB Case #: 201904881	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/01/2019 6:58 PM	Location of Incident: In front of 2254 Grand Concourse	Precinct: 46	18 Mo. SOL 12/1/2020	EO SOL 7/18/2021	
Date/Time CV Reported Thu, 06/06/2019 1:17 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 06/06/2019 1:17 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Elvin Pichardo	00515	937288	046 PCT
2. POM Diego Marin	03763	954097	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Kourounis	28949	954029	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Elvin Pichardo	Abuse: Sergeant Elvin Pichardo searched the vehicle in which § 87(2)(b) was an occupant.	
B.POM Diego Marin	Abuse: Police Officer Diego Marin searched the vehicle in which § 87(2)(b) was an occupant.	

### Case Summary

On June 6, 2019, § 87(2)(b) filed this complaint via the CCRB website.

On June 1, 2019, at approximately 7:00 p.m., § 87(2)(b) was driving eastbound on Grand Concourse in the vicinity of East 183<sup>rd</sup> Street in the Bronx. § 87(2)(b)'s vehicle was pulled over by Police Officer Nicholas Kouronis, Police Officer Diego Marin, and Sergeant Elvin Pichardo, all of the 46<sup>th</sup> Precinct. Sgt. Pichardo reached through § 87(2)(b)'s front passenger side window and unlocked the rear driver side door, and PO Marin searched § 87(2)(b)'s car (**Allegations A and B – Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was issued a summons for § 87(2)(b), [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) provided cell phone and dashcam footage of the incident to the investigation. The footage is located in IAs #20 and 21, respectively (**Board Review 01, 02**), and summarized in IAs #39 and 40 (**Board Review 03, 04**). Body Worn Camera (“BWC”) footage was obtained from Sgt. Pichardo, PO Kourounis and PO Marin. That footage is located in IAs # 50, 51, and 52 (**Board Review 05, 06, 07**), and summarized in IAs #53, 54 and 58 (**Board Review 08, 09, 10**).

**Allegation A: Abuse of Authority – Sergeant Elvin Pichardo searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B: Abuse of Authority – Police Officer Diego Marin searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b)'s vehicle was pulled over for speeding.

PO Marin's BWC footage, beginning at the 00:33 media player timestamp, visible at the bottom of the screen, captures PO Marin and PO Kourounis approaching the driver side of § 87(2)(b)'s car. PO Marin orders § 87(2)(b) to roll down his back window. § 87(2)(b) says it does not work. PO Marin orders § 87(2)(b) to unlock his car and open the back door. PO Kourounis asks § 87(2)(b) if there is anyone in the backseat because his tinted windows are too dark and says he cannot see into the back of the car. § 87(2)(b) says there is not. PO Kourounis orders § 87(2)(b) to unlock the door. § 87(2)(b) says the rear driver side window does not work and that PO Kourounis can see the rear area from § 87(2)(b)'s driver's window. PO Marin orders § 87(2)(b) to lower his window. At 01:09, Sgt. Pichardo leans against the front passenger door window frame and places his hands inside § 87(2)(b)'s car. The rear passenger window next to Sgt. Pichardo is completely lowered. Sgt. Pichardo reaches his right hand into the car and presses the unlock switch on the front passenger door. Sgt. Pichardo tells PO Marin that the door is unlocked. § 87(2)(b) asks Sgt. Pichardo if he just unlocked his vehicle and Sgt. Pichardo confirms he did. PO Marin opens the rear driver side door and shines his flashlight at the back seats and the floor behind the front seats for approximately 22 seconds before closing the door. It is still daylight out. At 02:27, PO Marin walks around § 87(2)(b)'s car to the rear passenger door, extends his right hand through the open window, and shines his flashlight at the back seats and the floor behind the front seats for approximately 1 minute and 15 seconds.

§ 87(2)(b)'s CCRB statement was generally consistent with the BWC footage. § 87(2)(b) said when he noticed the lights of the police vehicle behind him, he lowered the windows of his vehicle, with exception to the defective rear driver's side window (**Board Review 11**).

Sgt. Pichardo's and PO Marin's CCRB statements were somewhat consistent with the BWC footage. Sgt. Pichardo said when he approached the passenger side of § 87(2)(b)'s vehicle, the rear window was not lowered and he could not completely see the rear passenger area due to the darkly tinted window. Sgt. Pichardo leaned down to the open front passenger window so he could see § 87(2)(b) and hear the conversation between him and the officers on the driver's side. Sgt. Pichardo saw that the rear driver seat was empty, but he could not see if anyone was seated in the rear passenger seat. Sgt. Pichardo unlocked the door and told PO Marin that the vehicle was unlocked. Upon being presented with the BWC footage during his CCRB interview, Sgt. Pichardo acknowledged that it captured him telling PO Marin that there was no one hiding in the rear of § 87(2)(b)'s vehicle prior to unlocking the doors. Sgt. Pichardo stated that there could have been someone hiding behind the front passenger seat, which he said could not see because the rear passenger side window was too darkly tinted, and the darkly tinted windows, along with § 87(2)(b)'s reckless driving, raised his level of suspicion that there may have been another person in the vehicle (**Board Review 12**).

PO Marin ordered § 87(2)(b) to lower the rear driver side window and unlock the car out of concern for the officer's safety as he could not see into the back-seat area of the car. PO Marin heard § 87(2)(b) say "go ahead," and heard Sgt. Pichardo say the car was unlocked. PO Marin opened the rear driver side door, confirmed no people or weapons that § 87(2)(b) could reach for were present, and walked to the rear passenger door, which he looked inside of to make sure § 87(2)(b) did not reach for anything. The vehicle was low to the ground, so PO Marin leaned down to see inside, but he denied that he entered the vehicle at any point. During his CCRB interview, when presented with his BWC footage, which from 02:27 through 03:03, captures PO Marin's right hand positioned through the vehicle's open rear passenger window, PO Marin said that the BWC footage captured him leaning forward to get a good vantage point of § 87(2)(b) (**Board Review 13**).

As a protective measure, an officer who lawfully stops a car may order the driver to step out of the car. Nevertheless, in the absence of any independent indication of criminality, or of danger to the officer himself, he is not entitled, at his whim, to take the additional step of opening the doors of the vehicle to look inside. People v. David L., 56 N.Y. 2d 698 (1982) (**Board Review 14**). Crossing the plane of a car doorway to peer inside the vehicle for contraband constitutes a search. People v. Hernandez, 238 A.D.2d 131 (1997) (**Board Review 15**). Under the "automobile exception," officers must not only have probable cause to search the vehicle, but there must also be a nexus between the arrest and the probable cause to search. People v. Galak, 81 N.Y. 2d 463 (**Board Review 16**).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (**Board Review 17**).
- Sgt. Pichardo has been a member of service for 15 years and has been a subject in seven additional CCRB complaints comprised of 27 allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
- PO Marin has been a member of service for seven years and has been a subject in three additional CCRB complaints, one of which was substantiated.
  - Case #201400753 involved a substantiated allegation of Abuse – Stop against PO Marin. The Board recommended Command Discipline B, and the NYPD imposed Command Discipline A.
  - § 87(2)(g) [REDACTED]

#### Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of November 8, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**Board Review 18**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

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Squad No.: 13

Investigator: \_\_\_\_\_  
Signature

Inv. Trevor Hackett  
Print Title & Name

4/16/2020  
Date

Squad Leader: \_\_\_\_\_  
Signature

IM Laura Kastner  
Print Title & Name

04/16/2020  
Date